

RECORDING REQUEST BY, AND
WHEN RECORDED, MAIL TO:

City Clerk
City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354

EXEMPT FROM FILING FEES. CAL. GOV'T CODE § 6103

(Space above this line for Recorder's use)

DEVELOPMENT AGREEMENT

BETWEEN

UP HOMES, LLC

AND

THE CITY OF LOMA LINDA

*(Pursuant to California Government Code Sections 65864 – 65869.5
and City of Loma Linda Ordinance No. ____)*

September __, 2006

**Tentative Tract Map No. 06-02 (17795)
Precise Plan of Design No. 06-03**

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DEVELOPMENT AGREEMENT NO. ____

This Development Agreement (hereinafter "**Agreement**") is entered into effective as of the date approved by the City of Loma (hereinafter the "**Effective Date**") by the **CITY OF LOMA LINDA** (hereinafter "**City**"), and **UP HOMES, LLC**, a California limited liability company (hereinafter "**Owner**");

RECITALS

WHEREAS, Owner owns property located on the west side of Lind Avenue, south of Court Street and bordering the San Timoteo Channel, in the City of Loma Linda, also referred to as A.P.N. 0283-092-32, which property as combined (the "**Property**") consists of approximately 2.2 acres. The Property is described on **Exhibit "A"** attached and made a part of this Agreement by this reference; and

WHEREAS, Owner proposes to redevelop (or to cause to be redeveloped) the Property as a single family residential subdivision consisting of thirteen (13) condominium units plus one common open space lot (the "**Project**"); and

WHEREAS, the Project has received approval for a mitigated negative declaration, a tentative tract map and a precise plan of design, Owner has applied to City for a subdivision map and this Agreement (the "**Entitlements**"); and

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq., of the Government Code; and

WHEREAS, Owner has requested City to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of City; and

WHEREAS, by electing to enter into this Agreement, City shall bind future City Councils of City by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of City; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City staff, the Planning Commission and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the property subject to this Agreement, ensure progressive installation of necessary public and private improvements, provide for public services appropriate to the

development of Owner's development project, and generally serve the purposes for which development agreements under Sections 65864, et seq. of the Government Code are intended; and

WHEREAS, on June 28, 2006, the Planning Commission of the City of Loma Linda (the "**Planning Commission**"), after giving notice pursuant to Government Code Sections 65854, 65854.5 and 65856, held a public hearing on Owner's application for this Agreement. On _____, 2006, the City Council of the City of Loma Linda (the "**City Council**"), after providing public notice as required by law, similarly held a public hearing to consider Owner's application for this Agreement; and

WHEREAS, the Planning Commission and the City Council have found that this Agreement and the Project contemplated hereby are consistent with the General Plan, the approved tentative map, related project approvals and all other applicable plans, rules, regulations and official policies of City; and

WHEREAS, in accordance with the requirements of CEQA (Public Resources Code Sections 21000 et seq., appropriate studies, analyses, reports or documents were prepared and considered by the Planning Commission and the City Council. After the Planning Commission and the City Council made appropriate findings, the City Council certified, by Minute Order No. LL-2006-____ adopted on _____, 2006, a Mitigated Negative Declaration (the "**Environmental Clearance**") for the Project in compliance with CEQA; and

WHEREAS, on _____, 2006, the City Council adopted Ordinance No. _____ (the "**Ordinance**") approving this Agreement with Owner.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agency" means the Loma Linda Redevelopment Agency and the City as its successor in interest.

1.1.2 "Agreement" means this Development Agreement.

1.1.3 "City" means the City of Loma Linda, a political subdivision of the State of California.

1.1.4 "City Council" means the City Council of the City of Loma Linda.

1.1.5 "Covenants" or "Regulatory Agreement" means an agreement in the form of Exhibit "D" hereto.

1.1.6 “Development” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of residential dwelling units, buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.7 “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by City in connection with development of the Property including, but not limited to:

- (a) General plan;
- (b) Tentative and final subdivision and parcel maps;
- (c) Conditional use permits, variances, site plot plans;
- (d) Zoning amendments;
- (e) Grading and building permits;
- (f) Street and utility improvement permits.

1.1.8 “Development Exaction” means any requirement of City in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests. The term “Development Exaction” or “Exaction” shall not include City administrative, permit processing or other City-wide imposed development fees to cover the estimated or actual costs to City of processing applications for Development Approvals, Subsequent Development Approvals, or costs associated with preparation or implementation of this Development Agreement or for monitoring compliance with any Development Approvals which may be granted or issued pursuant to this Agreement.

1.1.9 “Development Plan” means the Development Approvals and the Land Use Regulations applicable to development of the Property, including but not limited to the Environmental Clearance and Tentative Tract Map No. 06-02 (17795).

1.1.10 “Effective Date” means the date this Agreement is approved by the City.

1.1.11 “Existing Development Approvals” means all Development Approvals approved or issued prior to the Effective Date and all other Approvals which are a matter of public record on the Effective Date.

1.1.12 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date and all other Development Regulations which are a matter of public record on the Effective Date.

1.1.13 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain.

1.1.14 "Owner" means the persons and entities listed as Owner on page 1 of this Agreement and their successors in interest to all or any part of the Property.

1.1.15 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.16 "Project" means the development of the Property contemplated by the Development Plan as defined herein as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.17 "Property" means the real property described on **Exhibit "A"** to this Agreement and made a part herein by this reference.

1.1.18 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property.

1.1.19 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement, including without limitation the Covenants.

2.2 Ownership of Property. Owner represents, warrants and covenants that it is the Owner of the fee simple title to the Property.

2.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of seven (7) years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement as applied to the Property in whole or in part and be made in compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property;

(b) Concurrent with any such sale, transfer or assignment, or within fifteen (15) business days thereafter, Owner shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to City, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of Owner under this Agreement which apply to the Property in whole or in part being sold, transferred or assigned (including without limitation the Covenants).

2.4.2 Termination of Agreement With Respect to Individual Lots Upon Sale to Public and Completion of Construction. The provisions of Subsection 2.4.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and shall no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and,

(b) A Certificate of Occupancy has been issued for a building on the lot.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by written consent of all parties in the manner provided for in Government Code Section 65868.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.3.

(b) Completion of a referendum proceeding or entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by City or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property prior to the Entitlements approved in connection with this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination.

2.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below, or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, postage and postal charges prepaid, and addressed to the recipient named below. All notices shall be addressed as follows:

If to City: City of Loma Linda
Attn: City Clerk
25541 Barton Road
Loma Linda, CA 92354
Facsimile: (909) 799-2890

With copies to: Stradling Yocca Carlson & Rauth
Attention: Mark J. Huebsch, Esq.
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Facsimile: (949) 725-4100

and

Director of the Community Development Department
City of Loma Linda
25541 Barton Road
Loma Linda, CA 92354
Facsimile: (909) 799-2890

If to Owner: UP Homes, LLC
16010 Phoenix Drive
City of Industry, CA 91745
Facsimile: (626) 226-4016
Telephone: (626) 968-2289

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Right to Develop. Subject to the terms of this Agreement including the Reservations of Authority, Owner shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The City shall issue all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan and consistent with the Entitlements. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes shall be those set forth in the Development Plan.

3.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulations not in conflict with the Development Plan.

3.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order and at such rate and at such time as Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan.

3.4 Changes and Amendments. The parties acknowledge that refinement and further development of the Project may require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or
- (b) Increase the density or intensity of use of the Property as a whole; or

- (c) Increase the maximum height and size of permitted buildings; or
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or
- (e) Constitute a project requiring a subsequent or environmental impact report pursuant to Section 21166 of the Public Resources Code.

3.5 Fiber Optic Network Installation. If, and to the extent, Owner constructs and/or installs a fiber optic network ("**the Network**") throughout all or a portion of the Project, Owner shall be subject to the following terms and conditions:

(a) The Network shall be installed exclusively in easements dedicated to the City and/or dedicated for public utility compatible uses and purposes. To the extent that Owner installs the Network, or any portion thereof, in locations which have not been dedicated to the City and/or dedicated for public utility compatible uses and purposes, it shall provide a dedicated easement to the City coterminous with the location of the Network.

(b) The property in which the Network, or any portion thereof, is located shall be deemed "public rights-of-way" within the meaning of Section 621 of the Cable Communications Policy Act of 1984, as amended.

(c) Owner shall join Underground Alert and provide proper notification pursuant thereto in the event of any excavation relating to the Network.

(d) Owner shall install, at its sole expense, a separate conduit of no less than three (3) inches in diameter in all locations where the Network is located which separate conduit shall be dedicated to the City for its exclusive use (the "**City Conduit**"). Owner shall, in addition, install and dedicate sufficient connection points, manholes, potholes, and other appurtenances as designated by the City in writing to allow the City to reasonably access and utilize the City Conduit.

(e) Owner shall install and dedicate to the City, at its sole cost, twelve (12) strands of unactivated dark fiber throughout the entirety of the Network for remote water meter reading purposes and other municipal purposes (the "**City Fiber**"). The City Fiber shall be connected to all residential units and business establishments located within the Project and shall be accessible to the City from a central location to be designated by the City in writing.

(f) In the event that the Owner, or any successor or assignee thereof, intends to provide or does provide any form of video services on the Network, it shall apply for and obtain, prior to the provision of such video services a cable television franchise from the City and shall be bound by the City's cable television ordinance in effect at said time. Owner agrees not to provide, or allow to be provided, any form of video services on the Network prior to obtaining a cable television franchise from the City.

(g) In the event that Owner, or any successor or assignee thereof, intends to provide or does provide any services which are not video services on the Network, it shall comply with the City's telecommunications ordinance in effect at said time. Owner, its

successors and assigns, agrees to be bound by any current or future telecommunications ordinance and agrees not to provide, or allow to be provided, any form of non-video services upon the Network without complying with the telecommunications ordinance, and the provisions thereof, including but not limited to, the payment of a franchise fee or license fee to the extent required by the telecommunications ordinance.

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property.

(a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations governing construction standards and specifications including, without limitation, the Uniform Building, Plumbing, Mechanical, Electrical, and Fire Codes as adopted and amended by the City of Loma Linda.

(d) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health and safety. To the extent possible, any such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement.

(e) Regulations which are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, imposing a development moratorium or limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the Development of the Property.

3.6.2 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.7 Referenda and Moratorium. It is the express intent of City and Owner that as of the date of this Agreement, this Agreement is a legally binding contract which shall, to the extent permitted by law, prevail over the provisions of any subsequently enacted moratorium, statute, ordinance, limitation or other measure, whether or not enacted by City, or by voter initiative or referendum, and whether or not such initiative, moratorium, referendum, statute, ordinance, limitation or other measure relates, in whole or in part, to the rate, timing, sequencing or phasing of

the development or construction of all or part of the Project or the Development Plan or affects Development Approvals which are issued by City.

In the event any initiative, moratorium, referendum, statute, ordinance, limitation or other measure is enacted subsequent to the Effective Date that would otherwise modify the development rights vested pursuant to this Agreement, Owner reserves the right to challenge any such enactment in a court of law should it become necessary to protect the development rights vested in Owner pursuant to the terms and conditions of this Agreement. Should any initiative or referendum be enacted which would preclude or make not feasible construction of all or any part of the Project, and should such enactment be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Agreement, Owner shall have no recourse against City for any damage Owner might sustain as a result thereof so long as the City did not participate in nor support any such initiative or referendum, except City shall provide for and timely implement an equitable program to reimburse Owner for unused fees and for an equitable reimbursement for Public Improvements or fees theretofore made but not required by the extent of development as of the date of the enactment.

3.8 Exactions. All further applications for Development Approvals contemplated by this Agreement, or made in connection with the development, construction, use or operation of the Project hereunder, shall be processed in accordance with the Existing Rules and the standards, terms and conditions of this Agreement, except that (a) City shall not impose thereunder any further Exactions other than those called for under the Existing Approvals and/or as permitted under the provisions of this Agreement, and (b) such applications and Development Approvals thereunder shall not result in the imposition upon Owner of any additional requirements, other than those already imposed pursuant to the Development Approvals, or otherwise permitted under the provisions of this Agreement.

3.9 Tentative Subdivision Map Extension. Tentative subdivision map(s), heretofore or hereafter approved in connection with development of the Property, shall be granted an extension of time for up to the seven (7) year term of this Agreement.

3.10 City Fees.

3.10.1 Payment of Fees. Owner shall pay all City administrative, permit processing and other city-wide imposed development fees in accordance with the master City Fees Schedule in effect at the time fees are paid.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance that private benefit conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

4.2 Enforceable Restriction of Low-Income Units; Development Agreement Fee. Owner agrees to enforceably restrict two (2) of the dwelling units on the Property to occupancy by owners having incomes not in excess of eighty percent (80%) of median income at "affordable housing cost" for a duration of forty-five (45) years, all as more particularly set forth on the Covenants. The Owner

shall execute and cause to be recorded as the Property the Covenants; such recordation, and proof thereof including delivery to City of a conformed copy showing document number and date and time of recordation, shall be accomplished on or before the earlier to occur of: (i) commencement of any construction on the Property; (ii) any transfer or assignment of the Property (or request for City approval thereof); or (iii) the thirtieth (30th) day following second reading of the Ordinance. The Covenants shall be enforceable by each of the City and the Loma Linda Redevelopment Agency (the "Agency").

In addition, Owner agrees to pay to City the corresponding amount as set forth in **Exhibit "C,"** including escalation, as a Development Agreement Fee; **Exhibit "C"** is attached and made a part of this Agreement by this reference ("**Development Agreement Fee Schedule**"). The Development Agreement Fee shall be paid within two (2) business days after the first final building inspection at the Property on any dwelling unit or if certificate(s) of occupancy are issued, then not later than the issuance of such certificate(s).

4.3 Street Names. All streets and public facilities located in the Development shall require approval by the City Department of Community Development.

5. REVIEW FOR COMPLIANCE.

5.1 Periodic Review. The Director of the Community Development Department shall review this Agreement on or before the first anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit a Monitoring Report, in a form acceptable to the Director of the Community Development Department, within thirty (30) days after written notice from the Director of the Community Development Department.

5.2 Procedure.

(a) During either a periodic review or a special review, Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

(b) Upon completion of a periodic review, the Director of the Community Development Department shall submit a report to the City Council setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his or her recommended finding on that issue.

(c) If the City Council finds on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the City Council makes a preliminary finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the City Council may modify or terminate this Agreement as provided in Section 5.3 and Section 5.4. Notice of default as provided under Section 6.3(b) of this Agreement shall be given to Owner prior to or concurrent with, proceedings under Section 5.3 and Section 5.4 or Section 6.5.

5.3 Proceedings Upon Modifications or Termination. If, upon a finding under Section 6.2, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Owner of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and shall contain:

- (a) The time and place of the hearing; and
- (b) A statement as to whether or not City proposes to terminate or to modify the Agreement; and
- (c) Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

5.4 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

5.5 Certificate of Agreement Compliance. If, at the conclusion of a Periodic Review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic Review and based upon the information known or made to the Director of the Community Development Department and the City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Owner may record the Certificate with the County Recorder.

6. DEFAULT AND REMEDIES.

6.1 Enforcement. Unless amended or canceled as herein provided, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general or specific plan, zoning, subdivision, or building regulations adopted by the City which otherwise would alter or amend the rules, regulations, or policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the Development Plan. Damages as described in Exhibit C hereof shall be payable in the event Owner develops (or causes to be developed) units on the Property but fails to enforceably restrict two units as low-income units, as further set forth in Exhibit C hereto.

6.2 Events of Default. A party to this Agreement is in default under this Agreement upon the happening of one or more of the following events or conditions:

- (a) If a warranty, representation or statement made or furnished by Owner to City or City to Owner is false or proves to have been false in any material respect when it was made;

(b) A finding and determination by City or Owner that upon the basis of substantial evidence the City or Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

6.3 Procedure Upon Default.

(a) Upon the occurrence of an event of default, the non-defaulting party may terminate or modify this Agreement in accordance with the procedures set forth in Subsection 6.3(b) below.

(b) The party claiming default shall provide written notice to the other party specifying the event of default and the steps the other party must take to cure the default. If, within thirty (30) days after the effective date of such notice, the other party does not commence all steps reasonably necessary to bring itself into compliance as required and thereafter diligently pursue such steps to completion, then the other party shall be deemed to be in default under the terms of this Agreement.

(c) All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing development agreements are available to the parties to pursue in the event there is a breach.

6.4 Owner's Default. In the event of any default by Owner, in addition to any other remedies which may be available to City, whether legal or equitable, and including without limitation those items described in Exhibit C hereto, City shall be entitled to retain any fees, grants, dedications or improvements to public property which it may have received prior to Owner's default without recourse from Owner or its successors or assigns.

6.5 Indemnity. Owner shall indemnify and hold City, its officers, agents and employees and independent contractors free and harmless from any claims or liability based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors for property damage, bodily injury, or death (Owner's employees included) or any other element or damage of any kind or nature, relating to or in any way connected with or arising from the activities provided in this Agreement. Owner shall defend, at its expense, including payment of attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. City may in its discretion participate in the defense of any such legal action. Owner further shall indemnify and hold harmless City, its officers, agents and employees and independent contractors free from any claims or liability based upon or asserted based upon the failure of Owner to develop two units enforceably restricted for use by low-income households at affordable housing cost.

6.6 Environmental Indemnity. Owner shall defend, indemnify and hold City, its officers, agents, employees, and independent contractors free and harmless from any claims or liability based upon or arising from the presence of any Hazardous Substance on any of the Property located in the Project. As used herein, "**Hazardous Substance**" shall mean any "hazardous substances," "toxic substance," "hazardous waste," or "hazardous material" as defined in one or more Environmental Laws, whether now in existence or hereinafter enacted; provided, however, that "**Hazardous Substance**" shall (i) include petroleum and petroleum products (other than naturally occurring crude oil and gas) and (ii) include radioactive substances which are not naturally occurring, and (iii) include any friable or non-friable asbestos or asbestos-containing material contained in or affixed

to a structure existing on the Property or otherwise located in, on or about the Property as of the date of this Agreement. As used herein, "Environmental Laws" shall mean any and all federal, state, municipal and local laws, statutes, ordinances, rules, and regulations which are in effect as of the date of this Agreement, or any and all federal, or state laws, statutes, rules and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment or removal of any Hazardous Substances, including without limitation, the Comprehensive Environmental Response Compensation Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., ("RCRA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and California Health and Safety Code Section 25100, et seq. Owner acquired the Property pursuant to a real property purchase and sales agreement entered into with Juan and Marisela Jaregui (the "**Purchase Agreement**"). To the extent that Owner is or may be entitled to defense or indemnification from one or more of the Prior Owners in connection with the presence of any such Hazardous Substances on the Property as provided in one or more of the Purchase Agreement, Owner shall assert any such defenses or indemnification rights on behalf of City, its officers, agents, employees, and independent contractors, or assign such rights to City, at City's option. However, Owner's obligation to defend, indemnify and hold harmless City and its officers, employees, agents or independent contractors from any claims or liability in connection with or arising from the presence of any Hazardous Substance on the Property or any portion thereof shall not be in any way limited or eliminated by the terms of the Purchase Agreement, and Owner's obligation hereunder shall survive the termination of this Development Agreement, no matter how caused. Notwithstanding anything herein to the contrary, Owner shall have no obligation to indemnify the City as herein provided with respect to any Hazardous Substances which are proven by Owner to have been first brought onto the Property subsequent to the sale by the Owner of the Property, or the affected portions thereof.

7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner with representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City or any default by Owner in the performance of Owner's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Owner. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have any obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

8. MISCELLANEOUS PROVISIONS.

8.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code.

8.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings, or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

8.3 Severability. If any terms, provisions, covenants or conditions of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provisions of Development of the Property set forth in Section 3 and the Public Benefits set forth in Section 4 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and City and Owner would not have entered into this Agreement but for such provisions and if determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

8.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed by interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

8.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.6 Singular and Plural. As used herein, the singular of any word includes the plural.

8.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

8.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

8.9 No Third Party Beneficiaries Other Than Agency. The Agency shall be a third party beneficiary of this Agreement. Excepting for the Agency, there shall be no third party beneficiaries of this Agreement. No person other than the parties and the Agency shall have any right of action based upon any provision of this Agreement.

8.10 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the terms of this Agreement shall not be extended under any circumstances for more than two (2) years as a result of any such force majeure event.

8.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed by such benefited party.

8.12 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

8.13 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

8.14 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San

Bernardino, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the Owner of such property.

8.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8.17 Authority to Execute. The person(s) executing this Agreement on behalf of Owner warrants and represents that he, she or they has/have the authority to execute this Agreement on behalf of his, her or their corporation, partnership or business entity and warrants and represents that he, she or they has/have the authority to bind Owner to the performance of its obligations hereunder.

8.18 Cooperation. City agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing, for discretionary permits, tract or parcel maps, or other land use entitlements for development of the Project in accordance with the provisions of this Agreement. City shall cooperate with Owner in providing expeditious review of any such applications, permits or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign such review to Project planner(s), building inspector(s), other staff personnel and/or contract planning or engineering consultants as required to insure the expeditious review, processing and completion of the Project.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date as described above.

“CITY”

THE CITY OF LOMA LINDA, a municipal corporation of the State of California

By: _____
Mayor

ATTEST:

Pamela Byrnes-O’Camb, City Clerk

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth
By: Mark J. Huebsch, Esq.

“OWNER”

UP HOMES, LLC a California limited liability company

By: _____
Lester Zhou
Its: Managing Member

*ALL SIGNATURES ARE TO BE ACKNOWLEDGED
BEFORE A NOTARY PUBLIC*

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title Or Type Of Document

- ☐ Partner(s) ☐ Limited
 ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title Or Type Of Document

- ☐ Partner(s) ☐ Limited
 ☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Number Of Pages

Signer is representing:
Name Of Person(s) Or Entity(ies)

Date Of Documents

Signer(s) Other Than Named Above

EXHIBIT "A"

DESCRIPTION OF PROPERTY

[To Come]

Assessor's Parcel Nos.: 0283-092-32.

EXHIBIT "B"
LAND USE MAP

EXHIBIT "C"

DEVELOPMENT AGREEMENT FEE SCHEDULE¹

A. Amount Payable in lieu of creation of one (1)
very low income unit (\$50,000 per unit).\$50,000^{1, 2}
.....

¹ The amount set forth shall increase three percent (3%) as of the first anniversary of the Effective Date and each anniversary thereafter.

² Amount shown is based upon 13-unit development as to which the Owner has agreed to enforceably restrict two (2) units as an affordable units for low-income households (as provided in the Covenants). If the number of units is modified or if Owner fails to develop and enforceably restrict two (2) units as affordable units low-income households, the Owner and those persons executing the Agreement on behalf of Owner shall be liable to the Agency and the City for the cost to the Agency (and/or the City) to produce two (2) affordable units available for low-income households, subject to covenants to remain in effect for not less than 45 years, restricting rents to affordable housing cost to low income households and restricting use to low income households; the parties agree that the cost of such units shall be determinable by the City Manager in good faith.

EXHIBIT "D"

COVENANTS

Recording Requested by:)
)
When Recorded Return to and)
Mail Tax Statements to:)
)
City of Loma Linda)
25541 Barton Road)
Loma Linda, California 92354)
Attn: City Clerk)
)

(Space above for Recorder's Use.)

This document is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

By: _____

REGULATORY AGREEMENT

These Covenants, Conditions and Restrictions, herein sometimes referred to as these "CC&Rs" or "Declaration" or "Regulatory Agreement" are made by the signatories hereto.

RECITALS

WHEREAS, each of the **Loma Linda Redevelopment Agency**, a public body, corporate and politic ("Agency"), the **City of Loma Linda**, a municipal corporation ("City"), and **UP Homes, LLC**, a California limited liability company ("Developer") is a party to this Declaration. The Agency, the City and the Developer are sometimes collectively referred to herein as the "Declarants."

WHEREAS, the City and the Developer have entered into that certain Development Agreement dated as of _____, 2006 (the "DA"). The DA is on file with the City as a public record and is deemed incorporated herein by reference. This Regulatory Agreement, which is entered into as a requirement of and in implementation of the DA, shall apply only to the "Site," which consists of certain real property described in Attachment No. 1 hereto.

WHEREAS, this Regulatory Agreement specifically requires that not fewer than two (2) dwelling units on the Site be maintained after occupancy at affordable housing cost, by low income households, as more particular provided herein.

Exhibit "D"

Page 1 of 10

WHEREAS, it is contemplated under the DA that, as of the recordation of this Regulatory Agreement, the Developer holds title to the "Site" as described in the legal description attached hereto as Exhibit "A" and incorporated herein by this reference.

WHEREAS, the DA sets forth certain restrictive covenants applicable to the Site, particularly the use of the Site for the provision of two (2) ownership housing units available at Affordable Housing Cost, to Low Income Households, as those terms are defined therein.

WHEREAS, Agency, City, and Developer wish to adopt this Regulatory Agreement to further govern the use of the Site ensure that the Agency achieves credit for production of affordable housing units pursuant to Section 33413 of the California Health and Safety Code.

NOW, THEREFORE, the Agency and the City each of the Developer (as owner of real property interests described hereinabove), in the City, declares that the Site shall be held, transferred, encumbered, used, sold, conveyed and occupied subject to the Covenants, Conditions and Restrictions hereinafter set forth expressly and exclusively for the use and benefit of said property, and the Agency and the City. Each and all of the restrictions, limitations, conditions, covenants, liens, reservations and charges herein contained shall run with the land and be recorded on the Site title and shall be binding on Declarants, their grantees, successors, heirs, executors, administrators, devisees or assigns, and all subsequent owner of all or any part of the Site.

ARTICLE I **DEFINITIONS**

The definitions provided herein shall be applicable to this Declaration and also to any amendment or supplemental Declaration (unless the context implicitly or explicitly shall prohibit), recorded against the Site pursuant to the provision of this Declaration.

Section 1. "Affordable Housing Project" means two (2) single family condominium residences on the Site, available to and occupied by Lower Income Households and operated in conformity with this Regulatory Agreement throughout the Required Covenant Period.

Section 2. "Affordable Housing Cost" has the meaning set forth in Health and Safety Code Section 50053. For a Very Low Income Household, Affordable Housing Cost means a monthly housing cost which does not exceed one twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of the Median Income for the Area for a household size appropriate to the Unit and one (1) additional Unit in the Project as a Unit available to, owned and occupied by Lower Income Households. For a Lower Income Household, Affordable Housing Cost means a monthly housing cost which does not exceed one-twelfth (1/12th) of thirty percent (30%) of seventy percent (70%) of the Median Income for the Area. "Household size appropriate to the unit," as used herein, shall mean two persons for each one-bedroom Unit (if any), and three persons for each two bedroom Unit. The maximum monthly rental amount of the units shall be adjusted annually by the formula set forth above upon the promulgation of revised median income figures for San Bernardino County by regulation of the California Department of Housing and Community Development.

Section 3. "Affordable Housing Cost Worksheet" means the worksheet substantially in the form of Attachment No. 2 to this Regulatory Agreement.

Section 4. "Agency" means the Loma Linda Redevelopment Agency and its successors in interest.

Section 5 "Approved Housing Project" means all improvements as provided to be developed by Developer under the DA. The Approved Housing Project must be completed in strict conformity with all specifications contained in or referred to in the DA.

Section 6. "Area" means the area defined by HUD which includes and consists primarily of San Bernardino County.

Section 7. "Certificate" or "Certification" is defined in Section 3(a).

Section 8. "City" means and refers to the City of Loma Linda, a municipal corporation.

Section 9. "City Code" means and refers to the City of Loma Linda Municipal Code as revised from time to time.

Section 10. "Common Areas" means all areas on the Site that are open or accessible to all tenants of the Site (such as grounds, but excluding buildings).

Section 11. "Date of Agreement" means _____, 2006.

Section 12. "Gross Income" means all payments from all sources received by a person (together with the gross income of all persons of the age of 18 years or older who intend to reside with such person in one residential unit) whether in cash or in kind as calculated pursuant to the Department of Housing and Urban Development ("HUD") Regulations (24 C.F.R. § 813) in effect as of the Date of Agreement.

Section 13. "Income Verification" means a form or forms to be obtained from Agency to be used in obtaining and verifying incomes of prospective purchasers.

Section 14. "Low Income Household" or "Lower Income Household" means a household earning not greater than eighty percent (80%) of median income for the Area.

Section 15. "Low Income Unit" or "Lower Income Unit" means a Unit occupied at Affordable Housing Cost by a Low Income (or Lower Income) Household.

Section 16. "Median Income for the Area" means the median income for the Area as most recently determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or, if programs under Section 8 are terminated, Median Income for the Area determined under the method used by the Secretary prior to such termination.

Section 17. "Owner" means each and every owner of the Site or any portion thereof.

Section 18. "Prescribed Housing Cost Levels" means a price which is Affordable Housing Cost.

Section 19. "Project" means two (2) detached, single-family residences, each constituting a separate lot [namely, lots ____ and ____] of Map _____ as recorded on _____ as document No. ____.

Exhibit "D"

Page 3 of 10

Section 20. "Regulatory Agreement" means this Regulatory Agreement and any amendments, modifications or supplements which may also be referred to herein as these "CC&Rs" or this "Declaration."

Section 21. "Required Affordable Unit" means a Unit on the Site, as constructed under the DA, and available to, occupied by, or held vacant for occupancy only by owner occupants qualifying as Lower Income Households at Affordable Housing Cost conforming to the Prescribed Housing Cost Levels.

Section 22. "Required Covenant Period" means the period commencing on the date this Regulatory Agreement is recorded and ending forty-five (45) years thereafter.

Section 23. "Site" means all of the real property and appurtenances as described in Exhibit "A" hereto, including all structures and other improvements thereon, and those hereafter constructed.

Section 24. "Unit" means a dwelling unit on the Site.

Section 25. "Very Low Income Households" means Very Low Income Households whose Adjusted Income does not exceed fifty percent (50%) of Median Income for the Area as determined by the United States Department of Housing and Urban Development from time to time and as set forth in Health and Safety Code Section 50105.

Section 26. "Very Low Income Unit" means a Unit occupied at Affordable Housing Cost by a Very Low Income Household.

ARTICLE II

LAND USE RESTRICTIONS; IMPROVEMENTS

Section 1. Uses. The Developer shall develop the Approved Housing Project on the Site. Thereafter, the Site shall be operated as an Affordable Housing Project, with two (2) units available at Affordable Housing Cost and occupied by Low Income Households, and devoted only to the such uses for the periods of time specified herein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to the DA, shall conform to all applicable provisions of the Loma Linda Municipal Code and the City Approvals.

The Site shall be used, maintained and operated in accordance with the DA and this Regulatory Agreement for the Required Covenant Period. Neither of the units in the Project shall at any time be utilized on a transient basis nor shall the Rental Project or any portion thereof ever be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer court or park. No part of the Site, from the date the Developer acquired its interest in the Site, has been or will at any time be owned or used as a cooperative housing corporation or a community apartment project or a stock cooperative.

Section 2. Affordable Housing.

Number of Units. The Developer, and each Owner, shall devote not less than two (2) Units in the Project as Units available to, owned and occupied by Lower Income Households. Each of the two (2) Units shall be sold at a price which conforms to "Prescribed Housing Cost Levels."

"Prescribed Housing Cost Levels" means housing cost that is Affordable Housing Cost for Lower Income Households. Two (2) Units shall be Lower Income Units which shall be continuously occupied by or held available for occupancy by Lower Income Households at an Affordable Housing Cost. For this purpose, a homebuyer who qualifies as a Lower Income Household at the time he or she first occupies an Affordable Unit shall be deemed to continue to be so qualified until such time as individual or family ceases to occupy the Unit as such household's primary residence.

Each prospective seller, including without limitation the Developer, shall clear each sale with the Agency for compliance with the terms and conditions hereof (including sale at Affordable Housing Cost to a Very Low Income Household or a Lower Income Household).

In the event a household's income in a particular Lower Income Unit initially complies with the income restriction for a Very Low Income Household but the income of such household increases, such increase shall not be deemed to result in a violation of the restrictions of this Regulatory Agreement so long as such household continues as owner occupant. However, any and all subsequent sales must be only to Lower Income Households at Affordable Housing Cost. The Low Income Units are not to be rented.

Duration of Affordability Requirements. The Lower Income Units shall be available to and occupied by Lower Income Households at Affordable Housing Cost throughout the Required Covenant Period.

Selection of Purchasers. As specified hereinbelow, Developer (and each Owner) shall demonstrate to the Agency that the proposed purchasers of the Lower Income Unit constitutes a Lower Income Household (or Very Low Income Household).

Prior to the sale, and as set forth in this Section 2 of Article II of this Declaration, each Owner shall require the prospective purchaser to execute and to complete an Income Verification certifying that the prospective purchaser of the Required Affordable Unit is/are a Very Low Income Household or a Lower Income Household) and meet(s) the eligibility requirements established for the Required Affordable Unit. The proposed purchase and sale agreement shall be provided to the Agency a reasonable period of time (but not less than 30 days prior to the proposed sale date). Additional material demonstrating the down payment and such additional material as may be requested by Agency shall be provided to the Executive Director of the Agency (or his designee).

Determination of Affordable Housing Cost for the Affordable Units. The Affordable Units shall be sold at Affordable Housing Cost. Affordable Housing Cost is calculated in accordance with the Affordable Housing Cost Worksheet. The maximum monthly housing cost for the Affordable Unit shall be adjusted annually as permitted by Section 50052.5 of the California Health and Safety Code based on the annual adjustment to the Median Income for the Area established pursuant to Section 50052.5 of the California Health and Safety Code, as more particularly set forth in the Affordable Housing Cost Worksheet.

THE MAXIMUM SALE PRICE FOR THE UNITS ESTABLISHED UNDER THIS REGULATORY AGREEMENT THROUGHOUT THE REQUIRED COVENANT PERIOD IS SUBSTANTIALLY BELOW THE FAIR MARKET VALUE FOR THE UNITS.

Section 3. [INTENTIONALLY OMITTED]

Exhibit "D"
Page 5 of 10

Section 4. Nondiscrimination. The Developer and each Owner shall refrain from restricting the sale of the Site, or any portion thereof, on the basis of race, color, creed, religion, sex, marital status, national origin or ancestry of any person. All such deeds shall contain or be subject to substantially the following nondiscrimination or nonsegregation clause:

(1) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

The covenants established in this Declaration shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the City and any successor in interest to the Site, together with any property acquired by the Developer pursuant to this Agreement, or any part thereof. The covenants against discrimination as set forth in this Section 1 of Article II shall remain in effect in perpetuity.

Section 5. Parking of Vehicles. Neither the Developer nor any Owner shall permit the parking, storing or keeping of any large commercial type vehicle (dump truck, cement mixer truck, oil or gas truck, etc.), or any recreational vehicle over twenty (20) feet in length (camper unit, motor home, trailer, mobile home or other similar vehicle), boats over twenty (20) feet in length, or any vehicle other than a private passenger vehicle, upon any Site. For purposes of this Section, a pickup truck with a pickup bed mounted camper shall be considered a private passenger vehicle; provided however, that no such vehicle shall be used for residential purposes while parked on the premises. There shall be no parking except on paved areas indicated for such purposes or plans on file with the City.

Neither the Developer nor any Owner shall permit major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle to be conducted upon the Site, including the parking areas, except for emergency repairs thereto and then only to the extent necessary to enable movement of the vehicle to a proper repair facility.

Section 6. Maximum Occupancies. No persons shall be permitted to occupy Units in excess of applicable limit of maximum occupancy set by the Loma Linda Municipal Code and the laws of the State of California.

ARTICLE III

DUTIES OF DEVELOPER: SPECIFIC MAINTENANCE RESPONSIBILITIES

Section 1. Exterior Building Maintenance. All exterior, painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking and defacing marks. Any such defacing marks shall be cleaned or removed within a reasonable period of time as set forth herein.

Section 2. Front and Side Exteriors. Each Owner shall at all times maintain the front exterior and yard in a clean, safe and presentable manner, free from defacing marks or any disrepair and any visible side exteriors. Each Owner shall hire maintenance personnel to maintain and/or repair any front exterior or yard or visible side yard and exterior of any lot or building.

Section 3. Graffiti Removal. All graffiti, and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed by the later to occur of (i) seventy-two (72) hours of their creation or (ii) seventy-two (72) hours after notice to the Owner.

Section 4. Driveways. All driveways must be paved and maintained with impervious material in accordance with the Loma Linda Municipal Code. In addition, all water must be made to drain freely to the public part of the waterway without any pooling.

ARTICLE IV **OBLIGATION TO MAINTAIN**

Section 1. Maintenance by Developer. Each Owner shall, at its sole cost and expense, maintain and repair his/her Unit and the improvements thereon keeping the same in a decent, safe and sanitary manner, in accordance with the United States Department of Housing and Urban Development ("HUD") Housing Quality Standards ("HQS"), and in good condition and making all repairs as they may be required by these CC&Rs and by all applicable Municipal Code and Uniform Code provisions. Each Owner shall also maintain the landscaping required to be planted in a healthy condition. If, at any time, such Owner fails to maintain its Unit or any portion thereof, and said condition is not corrected after the expiration of forty-five (45) days from the date of written notice from the Agency, either the Agency or the City may perform the necessary maintenance and such Owner shall pay such costs as are reasonably incurred for such maintenance. Payment shall be due within fifteen (15) days of receipt of an invoice from the Agency or the City.

ARTICLE V **ENFORCEMENT**

Section 1. Remedies. Breach of the covenants contained in the Declaration may be enjoined, abated or remedied by appropriate legal proceeding by the Agency or City.

This Declaration does not in any way infringe on the right or duties of the City of Loma Linda to enforce any of the provisions of the Loma Linda Municipal Code including, but not limited to, the abatement of dangerous buildings.

Section 2. Nuisance. The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowable at law or equity, against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any owner or its successors in interest, without derogation of the City's rights under law.

Section 3. Right of Entry. In addition to the above general rights of enforcement, the City shall have the right through its agents and employees, to enter upon any part of the Site for the purpose of enforcing the California Vehicle Code, and the ordinances and other regulations of the City, and for maintenance and/or repair of any or all publicly owned utilities. In addition, the City

Exhibit "D"

Page 7 of 10

has the right of entry at reasonable hours and upon and after reasonable attempts to contact the relevant Owner, on any lot to effect emergency repairs or maintenance which such Owner has failed to perform. Subsequent to sixty (60) days written notice to such Owner specifically outlining the Owner's noncompliance, the City shall have the right of entry on the Site at reasonable hours to enforce compliance with this Declaration which such Owner has failed to perform.

Section 4. Costs of Repair. The costs borne by the City or Agency of any such repairs or maintenance emergency and/or non-emergency, shall become a charge for which Developer shall be responsible.

Section 5. Cumulative Remedies. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

Section 6. Failure to Enforce. The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

Section 7. Enforcement and Nonliability. The City or Agency may from time to time make such efforts, if any, as it shall deem appropriate enforce and/or assist in enforcing this Declaration. However, neither the Agency nor the City will be subject to any liability for failure to affirmatively enforce any provision of this Declaration.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in all force and effect.

Section 2. Term. This Declaration shall run with and bind the interest of the Developer in the Site, and shall inure to the owner(s) of any property subject to this Declaration, his legal representatives, heirs, successors and assigns, and as provided in Article VI, Sections 2 and 3, be enforceable by the City, for a term equal to the Required Covenant Period, provided; however, that the covenants regarding nondiscrimination set forth in Section 4 of Article II of this Declaration shall remain in effect for perpetuity.

Section 3. Construction. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform and maintaining the development and ownership of the Units at Affordable Housing Cost by Lower Income Households. The article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

The Developer and each Owner shall be obligated by this Declaration to comply with the provisions hereof.

Section 5. Amendments. This Declaration may be amended only by the written agreement of each of (i) the Developer (or the Applicable Owners), (ii) the Agency, and (iii) the City.

Section 6. Notices. Any notice permitted or required to be delivered as provided herein to Developer or Owner shall be in writing and may be delivered either personally or by certified mail. Notice to the Agency shall be made by certified mail to the Executive Director or his designee at 25541 Barton Road, Loma Linda, California 92354 (with a copy to Stradling Yocca Carlson & Rauth, Attention: Mark J. Huebsch, 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660), and shall be effective upon receipt. Notice to Developer or Owners shall be made by certified mail to UP Homes, LLC, 16010 Phoenix Drive, City of Industry, CA 91745, and shall be effective upon receipt. Such address may be changed from time to time by notice in writing.

LOMA LINDA REDEVELOPMENT AGENCY,
a public body, corporate and politic

Dated: _____

By: _____
Dennis R. Halloway, Executive Director

ATTEST:

By: _____
Pamela Byrnes O’Camb
Agency Secretary

CITY OF LOMA LINDA,
a municipal corporation

Dated: _____

By: _____
Dennis R. Halloway, City Manager

ATTEST:

By: _____
Pamela Byrnes-O’Camb
City Clerk

UP HOMES, LLC, L.P.
(a California limited liability company)

By: _____
Lester Zhou
Its: Managing Member

ATTACHMENT NO. 1
LEGAL DESCRIPTION

[To Come; the "Site" consists of two condominium units, each of which shall be a Lower Income Unit]

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
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- ☐ Partner(s) ☐ Limited
☐ General
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Signer(s) Other Than Named Above

STATE OF CALIFORNIA

)

) ss.

COUNTY OF _____

)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

☐ personally known to me

-or-

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Signature Of Notary

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Title(s)

- ☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other: _____

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

ATTACHMENT NO. 2

AFFORDABLE HOUSING COST WORKSHEET

1. Income Eligibility¹

The first step in determining eligibility for an affordable housing program is determining whether the family which will be purchasing or renting the housing unit meets the following income standards applicable to San Bernardino County, based upon the size of the family:

<i>Income Level</i>	<i>1 person household</i>	<i>2 person household</i>	<i>3 person household</i>	<i>4 person household</i>	<i>5 person household</i>	<i>6 person household</i>	<i>7 person household</i>	<i>8 person household</i>
<i>Extremely Low</i>	\$12,100	\$13,800	\$15,550	\$17,250	\$18,650	\$20,000	\$21,400	\$22,750
<i>Very Low</i>	\$20,150	\$23,000	\$25,900	\$28,750	\$31,050	\$33,350	\$35,650	\$37,950
<i>Lower</i>	\$32,200	\$36,800	\$41,400	\$46,000	\$49,700	\$53,350	\$57,050	\$60,700
<i>Median</i>	\$40,300	\$46,000	\$51,800	\$57,500	\$62,100	\$66,700	\$71,300	\$75,900
<i>Moderate</i>	\$48,300	\$55,200	\$62,100	\$69,000	\$74,500	\$80,000	\$85,600	\$91,100

¹ Based on currently effective median income of San Bernardino and Riverside Counties, as set forth in 25 Cal. Code Regs. Section 6932, operative as of April 6, 2006. These median income numbers are revised annually.

2. Determining Affordable Housing Cost

For **ownership housing**, the second step in determining compliance with affordable housing requirements is determining whether the total housing costs payable by the buyer are within allowable amounts.

For **Extremely Low Income** Buyers:²

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$302.25**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$345.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$388.50**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$431.25**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$465.75**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$500.25**

For **Very Low Income** Buyers:³

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$503.75**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$575.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$647.50**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$718.75**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$776.25**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$833.75**

² Affordable Housing Cost for Extremely Low Income Households is the product of 30 percent times 30 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(1).

³ Affordable Housing Cost for Very Low Income Households is the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit. Health and Safety Code Section 50052.5 (b)(2).

For **Lower Income** Buyers:⁴

- purchasing a **0 bedroom** house, monthly housing payments may not exceed **\$705.25**
- purchasing a **1 bedroom** house, monthly housing payments may not exceed **\$805.00**
- purchasing a **2 bedroom** house, monthly housing payments may not exceed **\$906.50**
- purchasing a **3 bedroom** house, monthly housing payments may not exceed **\$1,006.25**
- purchasing a **4 bedroom** house, monthly housing payments may not exceed **\$1,086.75**
- purchasing a **5 bedroom** house, monthly housing payments may not exceed **\$1,167.25**

In addition, for any Lower Income Household whose income falls within the following guidelines, it is **optional** for the Agency to require that **affordable housing cost not exceed 30 percent of the gross income of the household**.⁵

- **1 person households** whose income is between **\$28,210 and \$32,200**
- **2 person households** whose income is between **\$32,200 and \$36,800**
- **3 person households** whose income is between **\$36,260 and \$41,400**
- **4 person households** whose income is between **\$40,250 and \$46,000**
- **5 person households** whose income is between **\$43,470 and \$49,700**
- **6 person households** whose income is between **\$46,690 and \$53,350**
- **7 person households** whose income is between **\$49,910 and \$57,050**
- **8 person households** whose income is between **\$53,130 and \$60,700**

⁴ Affordable Housing Cost for Lower Income Households is the product of 30 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. Health and Safety Code Section 50052.5(b)(3).

⁵ Health and Safety Code Section 50052.5 (b)(3).

For purposes of determining Affordable Housing Cost, “Monthly Housing Payments” include an estimate of the following costs for the upcoming twelve months:⁶

- principal and interest payments on the mortgage loan, including rehabilitation loans
- mortgage loan insurance fees
- property taxes and assessments
- fire and casualty insurance
- property maintenance and repairs
- a reasonable allowance for utilities (including garbage collection, sewer, water, electricity, gas and other fuels, but not telephone service). Such an allowance shall take into consideration the cost of an adequate level of service.
- homeowner association fees
- space rent, if the housing unit is on rented land

⁶ 25 California Code of Regulations Section 6920.
Attachment No. 2
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